

CHAPTER 22 CONTRACTORS

Secs.	
2200	Responsible Prospective Contractors
2201	Special Standards of Responsibility
2202	Application of General Standards
2203	Subcontractor Responsibility
2204	Obtaining Information for Determination of Responsibility
2205	Determinations and Documentation
2206	Preaward Surveys
2207-2209	[Reserved]
2210	Debarment, Suspension, and Ineligibility
2211	List of Debarred, Suspended, and Ineligible Contractors
2212	Consequences of Debarment, Suspension, or Ineligibility
2213	Debarment
2214	Debarment Proceedings
2215	Suspension
2216	Suspension Proceedings
2217	Scope of Debarment or Suspension
2218-2219	[Reserved]
2220	Organizational Conflicts of Interest
2221	Conflicting Contractor Involvement
2222	Procedures for Avoiding Conflicts
2223-2224	[Reserved]
2225	Contractor Team Arrangements
2299	Definitions
2200	RESPONSIBLE PROSPECTIVE CONTRACTORS
2200.1	The contracting officer shall make purchases from and award contracts only to responsible contractors.
2200.2	The contracting officer shall not make a purchase or award unless the contracting officer has determined in writing that the prospective contractor is responsible, in accordance with the provisions of this chapter.
2200.3	In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility.
2200.4	To be determined responsible, a prospective contractor shall meet all of the following requirements:

- (a) Financial resources adequate to perform the contract, or the ability to obtain them;
- (b) Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) A satisfactory performance record;
- (d) A satisfactory record of integrity and business ethics;
- (e) The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- (f) Compliance with the applicable District licensing and tax laws and regulations;
- (g) The necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- (h) Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

2200.5 If the contracting officer determines that the price bid or offered by a prospective contractor is so low as to appear unreasonable or unrealistic, the contracting officer may determine the prospective contractor to be nonresponsible.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

SOURCE: Final Rulemaking published at 35 DCR 1525 (February 26, 1988).

2201 SPECIAL STANDARDS OF RESPONSIBILITY

- 2201.1 When necessary for a particular procurement or class of procurements, the contracting officer shall develop, with the assistance of appropriate specialists, special standards of responsibility.
- 2201.2 Special standards shall be developed when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance.
- 2201.3 The contracting officer shall set forth the special standards in the solicitation.
- 2201.4 The special standards set forth in the solicitation shall apply to all bidders or offerors.
- 2201.5 The contracting officer shall award food contracts only to those prospective contractors that meet the general standards set forth in §2200 and are approved in accordance with the applicable sanitation standards and procedures set forth in Title 23 of the D.C. Municipal Regulations (DCMR) and any additional requirements set forth in the solicitation.

SOURCE: Final Rulemaking published at 35 DCR 1526 (February 26, 1988).

2202 APPLICATION OF GENERAL STANDARDS

2202.1 As prescribed in chapter 43 of this title, the contracting officer shall investigate and determine whether the contractor is eligible to receive an award under the Walsh-Healey Act, 41 U.S.C. §§35-45, and shall not rely on the contractor's representation, if either of the following apply:

- (a) A protest of eligibility has been lodged in accordance with federal law and regulations; or
- (b) The contracting officer has reason to doubt the validity of the representation.

2202.2 Except to the extent that a prospective contractor has sufficient resources, the contracting officer shall require, and the prospective contractor shall promptly provide, acceptable evidence of the prospective contractor's ability to obtain resources.

2202.3 Acceptable evidence of the prospective contractor's ability to obtain resources, as specified in §2200.4, shall consist of a commitment or explicit arrangement that will be in existence prior to the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, personnel, or other resources.

2202.4 A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible. The contracting officer may determine the contractor to be responsible if the circumstances of the prior deficiency were properly beyond the contractor's control or if the contractor has taken appropriate corrective action.

2202.5 An affiliated business shall be considered a separate entity in determining whether the business that is to perform the contract meets the applicable standards of responsibility. However, the contracting officer shall consider an affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility.

2202.6 If a bid or offer of a certified minority business that would otherwise be accepted is to be rejected because of a determination of nonresponsibility, the contracting officer shall refer the matter to the Minority Business Opportunity Commission (the "MBOC"). Within ten (10) working days, the MBOC shall provide any evidence it deems appropriate relevant to the responsibility of the certified minority business. The contracting officer shall consider any evidence provided by the MBOC in deciding whether to issue a determination of nonresponsibility pursuant to §2205.2.

SOURCE: Final Rulemaking published at 35 DCR 1526 (February 26, 1988).

2203 SUBCONTRACTOR RESPONSIBILITY

2203.1 Except as provided in §2212.6, a prospective prime contractor shall be accountable for determining the responsibility of prospective subcontractors. The prime contractor shall use the requirements and standards for responsibility set forth in this chapter.

2203.2 Because the determination of a prospective subcontractor's responsibility may affect the District's determination of the prospective prime contractor's responsibility, a

prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

- 2203.3 When it is in the best interests of the District, the contracting officer may independently determine a prospective subcontractor's responsibility, using the standards and requirements for responsibility set forth in this chapter.

SOURCE: Final Rulemaking published at 35 DCR 1526 (February 26, 1988).

2204 OBTAINING INFORMATION FOR DETERMINATION OF RESPONSIBILITY

- 2204.1 Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to satisfy the contracting officer that a prospective contractor currently meets the applicable standards and requirements for responsibility set forth in this chapter.
- 2204.2 The contracting officer shall obtain information regarding the responsibility of a prospective contractor who is the apparent low bidder or whose offer is in the competitive range. This information shall be obtained promptly after bid opening or receipt of offers.
- 2204.3 The prospective contractor shall promptly supply information requested by the contracting officer regarding the responsibility of the prospective contractor.
- 2204.4 If the prospective contractor fails to supply the information requested under §2204.3, the contracting officer shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the contracting officer shall determine the prospective contractor to be nonresponsible.
- 2204.5 The contracting officer shall use the following sources of information, as appropriate, to support determinations of responsibility or nonresponsibility:
- (a) A consolidated list (maintained pursuant to §2211.1) of debarred, suspended, and ineligible contractors maintained by the Director;
 - (b) Records and experience data, including verifiable knowledge of District personnel;
 - (c) Information supplied by the prospective contractor, including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information;
 - (d) Preaward survey reports; and
 - (e) Other sources, such as publications, suppliers, subcontractors, and customers of the prospective contractor, financial institutions, government agencies, and business and trade associations.
- 2204.6 Any prospective contractor who submits a bid or proposal for any contract exceeding one hundred thousand dollars (\$100,000) shall submit an affidavit indicating whether

the prospective contractor has complied with the filing requirements of District of Columbia tax laws, and whether the prospective contractor has paid taxes due to the District of Columbia or is in compliance with any payment agreement with the Department of Finance and Revenue. The affidavit shall be in a form approved by the Director of the Department of Finance and Revenue and shall acknowledge the penalty provided by law for making false statements.

2204.7 Before making an affirmative determination of responsibility for any contract exceeding one hundred thousand dollars (\$100,000), the contracting officer shall obtain certification from the Department of Finance and Revenue that the prospective contractor has complied with the filing requirements of District of Columbia tax laws, and that the prospective contractor has paid taxes due to the District of Columbia or is in compliance with any payment agreement with the Department of Finance and Revenue.

2204.8 Contracting officers and contract administrators who become aware of circumstances casting doubt on a contractor's ability to perform a contract successfully shall promptly inform the contracting officer and furnish the relevant information in writing.

SOURCE: Final Rulemaking published at 35 DCR 1528 (February 26, 1988).

2205 DETERMINATIONS AND DOCUMENTATION

2205.1 The contracting officer's execution of a contract shall constitute a determination that the prospective contractor is responsible with respect to that contract.

2205.2 When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the contracting officer shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

2205.3 If the contracting officer determines and documents that a responsive certified minority business lacks certain elements of responsibility, the contracting officer shall comply with the provisions of §2202.6.

2205.4 Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports and any applicable information from the Minority Business Opportunity Commission, shall be included in the contract file.

2205.5 Except as provided in chapter 42 of this title (regarding the Freedom of Information Act) and §2205.6, information, including the preaward survey report, accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the District government.

2205.6 The contracting officer may discuss preaward survey information with the prospective contractor before determining responsibility. At any time after award, the contracting officer may discuss the findings of the preaward survey with the company surveyed.

SOURCE: Final Rulemaking published at 35 DCR 1529 (February 26, 1988).

2206 PREAWARD SURVEYS

- 2206.1 The contracting officer may require a preaward survey to assist in determining a prospective contractor's capability to perform a proposed contract.
- 2206.2 If the contemplated contract will be ten thousand dollars (\$10,000) or less, or will have a fixed price of less than one hundred thousand dollars (\$100,000) and will involve only commercial products, the contracting officer shall not request a preaward survey unless circumstances justify the cost of the survey.
- 2206.3 Before beginning a preaward survey, the contracting officer shall ascertain whether the prospective contractor is debarred, suspended, or ineligible. If the prospective contractor is debarred, suspended, or ineligible, the contracting officer shall not proceed with the preaward survey.
- 2206.4 When the prospective contractor surveyed is a certified minority business, the contracting officer shall request information and advice concerning the contractor's capability and past performance from the MBOC before making a determination regarding the contractor's responsibility or nonresponsibility.
- 2206.5 When a preaward survey discloses unsatisfactory performance, the contracting officer shall determine the extent to which the prospective contractor plans, or has taken, corrective action.
- 2206.6 The preaward survey report shall indicate any persistent pattern of need under prior contracts for costly and burdensome District assistance to the contractor (such as engineering, inspection, or testing) that were provided to protect the District's interests but not contractually required.
- 2206.7 The contracting officer shall prepare a narrative preaward survey report that documents the results of the preaward survey and provides support for both the evaluation ratings and the determination of responsibility or nonresponsibility.
- 2206.8 The preaward survey report shall, as necessary, include information concerning the contractor's technical capabilities, financial capability, quality assurance procedures, and the quality of the contractor's accounting system.
- 2206.9 The preaward survey report shall be prepared in the form prescribed by the Director.

SOURCE: Final Rulemaking published at 35 DCR 1530 (February 26, 1988).

§§2207-2209: RESERVED

2210 DEBARMENT, SUSPENSION, AND INELIGIBILITY

- 2210.1 The provisions of §§2210 through 2217 shall govern the debarment and suspension of contractors.
- 2210.2 Debarment and suspension shall be imposed only in the public interest for the District's protection and not for purposes of punishment, and shall be imposed only for the causes set forth in this chapter.
- 2210.3 The Director shall obtain lists of contractors declared ineligible under federal laws and regulations applicable to the District of Columbia, and shall notify District agencies of the ineligibility restrictions promulgated under federal authority in accordance with the provisions of §2211.
- 2210.4 Any District official making a declaration of the ineligibility of any individual or firm to contract or subcontract with the District under authority of any District statute or regulation (other than the Act or the D.C. Procurement Regulations) shall inform the Director in writing of the declaration. The notice to the Director shall cite the statutory basis for the declaration and the grounds for the declaration. The Director shall include notice of the ineligibility restrictions on the lists issued under §2211.

SOURCE: Final Rulemaking published at 35 DCR 1531 (February 26, 1988).

2211 LIST OF DEBARRED, SUSPENDED, AND INELIGIBLE CONTRACTORS

- 2211.1 The Director shall compile and maintain a current, consolidated list of all contractors that have been debarred, suspended, or declared ineligible.
- 2211.2 The Director shall revise and distribute the consolidated list quarterly to all agencies and shall provide with the list the name and telephone number of the official responsible for its maintenance and distribution.
- 2211.3 The consolidated list shall include the following:
- (a) The names and addresses of all debarred, suspended, or ineligible contractors, in alphabetical order, with cross references when more than one (1) name is involved in a single action;
 - (b) The cause for each action, and pertinent statutory or regulatory authority;
 - (c) The scope of the action;
 - (d) In the case of ineligible contractors, the name of the federal agency or other authority responsible for the action, and the name and telephone number of the point of contact for the action; and
 - (e) The termination date for each listing.

SOURCE: Final Rulemaking published at 35 DCR 1531 (February 26, 1988).

2212 CONSEQUENCES OF DEBARMENT, SUSPENSION, OR INELIGIBILITY

- 2212.1 Unless the Director determines in writing that there is a compelling reason to do otherwise, agencies shall not solicit offers from, award contracts to, or consent to subcontract with a debarred or suspended contractor.
- 2212.2 A contractor listed as ineligible shall be excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the applicable statute or regulation.
- 2212.3 The contracting officer may continue contracts or subcontracts in existence at the time a contractor is debarred, suspended, or declared ineligible, unless the Director determines in writing that the existing contracts or subcontracts should be terminated to protect the best interests of the District for any of the reasons set forth in §318 of the Act.
- 2212.4 If the Director decides to terminate a contract based on a contractor's suspension or debarment, the type of termination action to be taken shall be made only after review by the Corporation Counsel.
- 2212.5 The contracting officer shall not exercise an option to renew or otherwise extend a current contract with a debarred or suspended contractor, or a contract which is being performed in any part by a debarred or suspended subcontractor, unless the Director approves the action in writing, based on compelling reasons for exercise of the option or extension.
- 2212.6 In any subcontract subject to District consent, the contracting officer shall not consent to the award of a subcontract to any debarred or suspended contractor unless the Director approves the award, in writing, based on compelling reasons for the award.

SOURCE: Final Rulemaking published at 35 DCR 1532 (February 26, 1988).

2213 DEBARMENT

- 2213.1 The Director may debar a contractor for any of the following causes:
- (a) Conviction of, or civil judgment for, commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
 - (b) Conviction of, or civil judgment for, violation of any federal, state, or District antitrust statute relating to the submission of offers;
 - (c) Conviction of, or civil judgment for, commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (d) Conviction of, or civil judgment for, commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor or subcontractor;

- (e) Violation of the terms of a District contract or subcontract so serious as to justify debarment, such as willful failure to perform in accordance with the terms of one (1) or more District contracts, a history of failure to perform, or unsatisfactory performance on one (1) or more District contracts;
- (f) A false assertion of minority status as defined in the Minority Contracting Act of 1976, effective March 29, 1977 (D.C. Law 1-95, D.C. Code §1-1141 *et seq.*); or
- (g) Any other cause of a serious or compelling nature that affects the present responsibility of the contractor or subcontractor.

2212.2 Debarment shall constitute debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities.

2212.3 The Director may extend the debarment decision to include any affiliates of the contractor by specifically naming the affiliate and giving the affiliate written notice of the proposed debarment and an opportunity to respond in accordance with the provisions of this chapter.

2212.4 Debarment shall be for a period commensurate with the seriousness of the cause(s), but shall not exceed three (3) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

2212.5 The Director may reduce the period or extent of debarment, upon the contractor's request supported by documentation, for the following reasons:

- (a) Newly discovered material evidence;
- (b) Reversal of the conviction or judgment upon which debarment was based;
- (c) *Bona fide* change in ownership or management;
- (d) Elimination of other causes for which the debarment was imposed; or
- (e) Other reasons that the Director deems appropriate.

2213.6 The Director may extend the debarment period for an additional period if the Director determines that the extension is necessary to protect the interests of the District. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment was based. The extension of debarment shall be subject to the procedures set forth in §2214.

SOURCE: Final Rulemaking published at 35 DCR 1533 (February 26, 1988).

2214 DEBARMENT PROCEEDINGS

2214.1 The Director shall initiate debarment proceedings by notifying the contractor and any specifically named affiliates by certified mail, return receipt requested, of the following:

- (a) The reasons for the proposed debarment in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which the proposed debarment is based;
- (b) The cause(s), set forth in §2213.1 or the Act, relied upon for the proposed debarment;
- (c) That, within thirty (30) working days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine issue of material fact;
- (d) The District's procedures governing debarment decision-making;
- (e) The potential effect of the proposed debarment; and
- (f) That, if no suspension is in effect, the District will not solicit offers from, award contracts to, renew, or otherwise extend contracts with, or consent to subcontracts with the contractor pending a debarment decision.

2214.2 In debarment actions not based upon a conviction or civil judgment, if the Director finds that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, the Director shall do the following:

- (a) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any District evidence or testimony; and
- (b) Make an electronic record of the proceedings, and make a copy or transcription of the record available at cost to the contractor upon request.

2214.3 In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment shall be established by a preponderance of the evidence.

2214.4 In actions based upon a conviction or civil judgment, or in which there is no genuine issue of material fact, the Director shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor.

2214.5 If no suspension is in effect, the decision under §2214.4 shall be made within thirty (30) working days after receipt of any information and argument submitted by the contractor, unless the Director extends this period for good cause.

2214.6 In actions in which additional proceedings are necessary to decide issues of material fact, the Director shall prepare written findings of fact. The Director shall base the debarment decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

2214.7 If the Director decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice of the debarment action by certified mail, return receipt requested. The notice shall include the following:

- (a) A reference to the notice of proposed debarment;
- (b) The specific reasons for debarment;
- (c) The period of debarment, including effective dates;
- (d) A statement advising that the debarment is effective throughout the executive branch of the District government unless the Director determines in writing, based on compelling reasons and certification by the head of a contracting agency, that continued business dealings between that agency and the contractor are justified; and
- (e) Notice to the debarred contractor of its rights to judicial or administrative review as provided in the Act.

2214.8 If debarment is not imposed, the Director shall promptly notify the contractor and any affiliates involved of the decision by certified mail, return receipt requested.

SOURCE: Final Rulemaking published at 35 DCR 1535 (February 26, 1988).

2215 SUSPENSION

2215.1 The Director may suspend a contractor upon determining that there is adequate evidence of any of the following:

- (a) Probable cause for debarment pursuant to §2213.1;
- (b) The commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
- (c) The violation of any federal, state, or District antitrust statute relating to the submission of offers;
- (d) The commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (e) The commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor or subcontractor; or
- (f) Any other cause of so serious or compelling a nature that it affects the present responsibility of a contractor or subcontractor.

2215.2 Indictment for any of the causes set forth in §2215.1 shall constitute adequate evidence for suspension.

2215.3 Suspension shall constitute suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities.

2215.4 In assessing the adequacy of the evidence, the Director shall consider the amount of information available, the credibility of the information given the circumstances,

whether important allegations are corroborated, and the inferences that can reasonably be drawn. This assessment shall include an examination of basic documents, such as contracts, inspection reports, and correspondence.

2215.5 The Director may extend the suspension decision to include any affiliates of the contractor if they are specifically named and given written notice of the suspension and an opportunity to respond.

2215.6 The suspension of a contractor shall be effective throughout all agencies subject to the provisions of the DCPR unless the Director determines in writing, based on compelling reasons and certification by the head of a contracting agency, that continued business dealings between that agency and the contractor are justified.

SOURCE: Final Rulemaking published at 35 DCR 1536 (February 26, 1988).

2216 SUSPENSION PROCEEDINGS

2216.1 In actions not based on an indictment, if the Director finds that the contractor's submission in opposition to the suspension raises a genuine issue of fact material to the suspension, and if no determination has been made, on the basis of the advice of the Corporation Counsel, that substantial interests of the District in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the Director shall do the following:

- (a) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any of the District's evidence or testimony; and
- (b) Make an electronic record of the proceedings, and make a copy or transcription of the record available at cost to the contractor upon request.

2216.2 When a contractor or any specifically named affiliate is suspended, the suspended parties shall be immediately advised by certified mail, return receipt requested, of the following:

- (a) The basis for the suspension including whether the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities of a serious nature in business dealings with the District or seriously reflecting on the propriety of further District dealings with the contractor; Provided that, any irregularities shall be described in sufficient detail to place the contractor on notice without disclosing the District's evidence;
- (b) That the suspension is for a temporary period pending the completion of an investigation and other legal proceedings that may follow;
- (c) The causes, based on §2215.1 or the Act, relied upon for imposing the suspension;
- (d) The effect of the suspension;
- (e) That, within thirty (30) working days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information

and argument in opposition to the suspension, including any additional specific information that raises a genuine issue of material fact;

- (f) That additional proceedings to decide issues of material fact will be conducted unless the action is based on an indictment or a determination is made, on the basis of advice of the Corporation Counsel, that the substantial interests of the District in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced; and
- (g) That the suspended contractor has the right to judicial or administrative review as provided in the Act.

- 2216.3 In an action based on an indictment in which the contractor's submission does not raise any genuine issue of material fact, or in which additional proceedings to determine disputed material facts have been denied on the basis of the advice of the Corporation Counsel, the Director's decision shall be based on all the information in the administrative record, including any submission made by the contractor.
- 2216.4 In actions in which additional proceedings are necessary to decide issues of material fact, the Director shall prepare written findings of fact. The Director shall base the suspension decision on the facts as found, information and argument submitted by the contractor, and any other information in the administrative record.
- 2216.5 The Director's decision shall modify or terminate the suspension, or leave the suspension in force. Written notice of the Director's decision shall be sent promptly to the contractor and any affiliates involved by certified mail, return receipt requested.
- 2216.6 Suspension shall be for a temporary period pending the completion of investigation and any legal proceedings, unless the suspension is terminated sooner by the Director.
- 2216.7 If legal proceedings are not initiated within twelve (12) months after the date of the suspension notice, the suspension shall automatically terminate, unless the Corporation Counsel requests an extension, in which case the suspension may be extended for an additional six (6) months. In no event shall a suspension extend beyond eighteen (18) months, unless legal proceedings have been initiated within that period.
- 2216.8 The Director shall notify the Corporation Counsel of the automatic termination date of a suspension at least thirty (30) working days before the twelve (12) month period expires, in order to give the Corporation Counsel an opportunity to request an extension.

SOURCE: Final Rulemaking published at 35 DCR 1538 (February 26, 1988).

2217 SCOPE OF DEBARMENT OR SUSPENSION

- 2217.1 The scope of any debarment or suspension shall be based upon the conduct of the persons or contractors involved, in accordance with the provisions of this section.
- 2217.2 The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may

be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of knowledge, approval, or acquiescence.

2217.3 The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

2217.4 The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of knowledge, approval, or acquiescence.

SOURCE: Final Rulemaking published at 35 DCR 1540 (February 26, 1988).

§§2218-2219: RESERVED

2220 ORGANIZATIONAL CONFLICTS OF INTEREST

2220.1 The provisions of this section shall apply to all procurements. Contracting officers shall seek to avoid organizational conflicts of interest, especially when procuring the following:

- (a) Management support services;
- (b) Consultant or other professional services;
- (c) Contractor performance of or assistance in technical evaluations; and
- (d) Systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.

2220.2 The contracting officer shall analyze each planned procurement in order to identify and evaluate potential organizational conflicts of interest as early in the procurement process as possible and avoid, neutralize, or mitigate significant potential conflicts before contract award.

2220.3 The contracting officer shall seek to prevent the existence of conflicting roles that might bias a contractor's judgment and shall seek to prevent unfair competitive advantage.

- 2220.4 The contracting officer shall obtain the advice of the Corporation Counsel and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation and contract clauses approved by the Director.

SOURCE: Final Rulemaking published at 35 DCR 1540 (February 26, 1988).

2221 CONFLICTING CONTRACTOR INVOLVEMENT

- 2221.1 A contractor that provides systems engineering and technical direction for a system, but does not have overall contractual responsibility for its development, integration, assembly and checkout, or production, shall not be awarded any of the following:
- (a) A contract to supply the system or any of its major components;
 - (b) A subcontract to supply the system or any of its major components; or
 - (c) A consulting contract with a supplier of the system or any of its major components.
- 2221.2 If a contractor prepares and furnishes complete specifications covering nondevelopmental items to be used in a competitive procurement, that contractor shall not be allowed to furnish those items, either as a prime contractor or as a subcontractor, for a reasonable period of time to include at least the duration of the initial production contract. This subsection shall not apply to the following:
- (a) Contractors that furnish, at District request, specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; and
 - (b) Contractors acting as industry representatives that assist District agencies prepare, refine, or coordinate specifications, regardless of source when the assistance is supervised and controlled by District representatives.
- 2221.3 If a single contractor drafts complete specifications for nondevelopmental equipment, the contractor shall be eliminated for a reasonable time from competition for production based on those specifications.
- 2221.4 If a contractor prepares, or assists in preparing, a work statement to be used in competitively procuring a system or services, or provides material leading directly, predictably, and without delay to this type of work statement, that contractor shall not supply the system or services unless one (1) or more of the following apply:
- (a) The contractor is the sole source;
 - (b) The contractor has participated in the developmental and design work; or
 - (c) More than one (1) contractor has been involved in preparing the work statement.
- 2221.5 A contract involving technical evaluation of other contractors' offers, products, or consulting services shall not be awarded to a contractor that would evaluate or advise

the District concerning its own products or activities, or those of a competitor, without proper safeguards to ensure objectivity and protect the District's interests.

SOURCE: Final Rulemaking published at 35 DCR 1541 (February 26, 1988).

2222 PROCEDURES FOR AVOIDING CONFLICTS

- 2222.1 When information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, the contracting officer shall seek the information from within the District or from other readily available sources.
- 2222.2 Before issuing a solicitation for a contract that may involve a significant potential conflict, the contracting officer shall recommend to the head of the contracting agency a course of action for resolving the conflict.
- 2222.3 If the contracting officer initially decides that a particular procurement involves a significant potential organizational conflict of interest, before issuing the solicitation the contracting officer shall submit the following to the head of the contracting agency for approval:
- (a) A written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict;
 - (b) A draft solicitation provision; and
 - (c) When appropriate, a proposed contract clause.
- 2222.4 The head of the contracting agency shall do the following:
- (a) Review the contracting officer's analysis and recommended course of action, including the draft provision and any proposed clause;
 - (b) Consider the benefits and detriments to the District and prospective contractors; and
 - (c) Approve, modify, or reject the recommendation in writing.
- 2222.5 After receiving a response from the head of the contracting agency, the contracting officer shall do the following:
- (a) Include an approved provision and any approved clause in the solicitation;
 - (b) Consider additional information provided by prospective contractors in response to the solicitation or during negotiations; and
 - (c) Before awarding the contract, resolve the potential conflict in a manner consistent with the approval or other direction by the head of the contracting agency.
- 2222.6 Any solicitation that may involve a significant potential organizational conflict of interest shall contain a provision which describes the following:

- (a) The nature of the potential conflict as seen by the contracting officer;
- (b) The nature of the proposed restraint upon future contractor activities; and
- (c) Depending on the nature of the procurement, whether the terms of any proposed conflicts clause and the application of the provisions of §§2220 through 2222 to the contract are subject to negotiation.

2222.7 If, as a condition of award, a contractor's eligibility for future prime contract or subcontract awards would be restricted or a contractor would have to agree to some other restraint, the solicitation shall contain a conflicts clause, approved by the Director, that specifies both the nature and duration of the proposed restraint. The contracting officer shall include the conflicts clause in the contract.

2222.8 Any restraint imposed by a conflicts clause shall be limited to a fixed term of reasonable duration which is sufficient to avoid the circumstance of unfair competitive advantage or potential bias. In each case, the restriction shall specify termination by a specific date or upon the occurrence of an identifiable event.

2222.9 The head of the contracting agency may waive any requirement of §§2220 through 2222, except a requirement subject to approval by the Director, if the head of the contracting agency determines in writing that the application of the rule of procedure in a particular situation would not be in the best interests of the District. Each request for a waiver shall be in writing, and shall describe the nature of the conflict and the justification for the waiver.

SOURCE: Final Rulemaking published at 35 DCR 1542 (February 26, 1988).

§§2223-2224: RESERVED

2225 CONTRACTOR TEAM ARRANGEMENTS

2225.1 The District may recognize the integrity and validity of contractor team arrangements when those arrangements are identified and company relationships are fully disclosed in an offer or, for an arrangement entered into after submission of an offer, before the arrangement becomes effective. The District shall not require or suggest the dissolution of contractor team arrangements unless those arrangements are in violation of any law or regulation, or are not in the best interests of the District.

2225.2 Nothing in this section shall authorize any contractor team arrangement in violation of antitrust statutes or limit the District's rights to do any of the following;

- (a) Require consent to subcontract;
- (b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor;

- (c) Provide to the prime contractor data rights owned or controlled by the District;
- (d) Pursue policies on competitive contracting, subcontracting, and component breakout after initial production, or at any other time; or
- (e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

SOURCE: Final Rulemaking published at 35 DCR 1544 (February 26, 1988).

2299 DEFINITIONS

2299.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Adequate evidence - information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate - An individual or firm that controls, is controlled by, or is under common control with another individual or firm.

Commercial product - a product, item, material, component, subsystem, or system that is sold or traded to the general public in the course of normal business operations at an established catalog price or market price.

Contract administrator - the individual responsible for overseeing the conduct of contract work.

Contractor team arrangement - an arrangement under which two (2) or more individuals or businesses form a partnership or joint venture to act as a potential prime contractor, or an arrangement under which a potential prime contractor agrees with one (1) or more other individuals or businesses to have them act as its subcontractors under a specified District contract or procurement program.

Conviction - a judgment of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a judgment entered upon a plea of *nolo contendere*.

Debarment - action taken by the Director to exclude a contractor from District contracting and District-approved subcontracting for a reasonable, specified period. A contractor so excluded is "debarred."

Director - the Director of the Department of Administrative Services.

Indictment - an accusation in writing found and presented by a grand jury to the court charging that a named person has committed a criminal offense, including any information or other filing by a competent prosecuting authority charging a criminal offense.

Ineligible - excluded from District contracting or subcontracting, under authority of federal statute or regulation applicable to the District (such as the Davis-Bacon Act, 40 U.S.C. §§276a-276a-7,

the Service Contract Act, 41 U.S.C. §§351-358, or the Equal Employment Opportunity Act of 1972, 5 U.S.C. §§5108, 5314 *et seq.*, and 42 U.S.C. §2000e), or excluded under authority of a District statute or regulation other than the Act or the D.C. Procurement Regulations.

Legal proceedings - any civil judicial proceeding to which the District is a party or any criminal proceeding, including appeals from these proceedings.

List of debarred, suspended, and ineligible contractors - a list compiled, maintained, and distributed by the Department of Administrative Services which contains the names of contractors debarred or suspended under the provisions of this chapter, as well as contractors declared ineligible under other statutory or regulatory authority.

Organizational conflict of interest - when the nature of the work to be performed under a proposed District contract might, without some restraint on future activities, result in an unfair competitive advantage to a contractor or impair a contractor's objectivity in performing contract work.

Preaward survey - a detailed review (sometimes on-site) of a contractor to ascertain information sufficient to make a determination regarding responsibility.

Suspension - action taken by the Director to disqualify a contractor temporarily from District contracting and District-approved subcontracting. A contractor so disqualified is "suspended."

Systems engineering - developmental, analytical, or other non-production activities, including determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test results, or supervising design.

Technical direction - a combination of activities including developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies.

SOURCE: Final Rulemaking published at 35 DCR 1545 (February 26, 1988).

